

UNITED STATES OF AMERICA  
U.S. DISTRICT COURT -- EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BUSINESS HEALTH  
SOLUTIONS, P.C.

Plaintiff,

-VS-

RESEARCH NOW GROUP LLC,  
E-REWARDS SERVICES, INC.,  
and JOHN DOES 1-10,

Defendants.

**COMPLAINT – CLASS ACTION**

*Plaintiff is not aware of any related cases.*

1. Plaintiff, Business Health Solutions, P.C., brings this action to secure redress for the actions of Research Now Group, LLC and E-Rewards Services, Inc. in sending or causing the sending of unsolicited advertisements to telephone facsimile machines in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).
2. The TCPA expressly prohibits unsolicited fax advertising. Unsolicited fax advertising damages the recipients. The recipient is deprived of its paper and ink or toner and the use of its fax machine. The recipient also wastes valuable time it would have spent on something else. Unsolicited faxes prevent fax machines from

receiving and sending authorized faxes, cause wear and tear on fax machines, and require labor to attempt to identify the source and purpose of the unsolicited faxes.

### **PARTIES**

3. Plaintiff Business Health Solutions, P.C. (“Business Health Solutions”) is a professional corporation with offices at 17197 North Laurel Park Drive, Suite 107, Livonia Michigan 48152, where it maintains telephone facsimile machines that automatically print onto paper with ink/ toner.

4. Defendant Research Now Group Now, LLC is a Delaware limited liability company with principal offices at 5800 Tennyson Pkwy, Suite 600, Plano Texas, 75024.

5. Defendant E-Rewards, Services, Inc. is a Delaware corporation with principal offices at 5800 Tennyson Pkwy, Suite 600, Plano Texas, 75024.

6. Defendants John Does 1-10 are other natural or artificial persons that were involved in the sending of the facsimile advertisement described below. Plaintiff does not know who they are.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction under 28 U.S.C. §§1331 and 1367. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 751-53 (2012).

8. Personal jurisdiction is proper because Defendants have committed tortious acts in this District by causing the transmission of unlawful communications

into the District.

9. Venue in this District is proper for the same reason.

### **FACTS**

10. On November 22, 2016, Business Health Solutions received the unsolicited fax advertisement attached as Exhibit A on its facsimile machine. The fax offered to purchase participation in a survey in exchange for a payment of \$10.00.

11. Such faxes are advertisements subject to the TCPA. *Fischbein v. Olson Research Grp., Inc.*, No. 19-3018, 2020 WL 2505178 (3d Cir. May 15, 2020).

12. Discovery may reveal the transmission of additional faxes as well.

13. Defendants are responsible for sending or causing the sending of the fax.

14. Defendants derived economic benefit from the sending of the fax.

15. Defendants either negligently or wilfully violated the rights of Plaintiff and other recipients in sending the fax.

16. Plaintiff had no prior relationship with Defendants and had not authorized the sending of fax advertisements to Plaintiff.

17. On information and belief, the fax attached hereto was sent as part of a mass broadcasting of faxes.

18. On information and belief, Defendants have transmitted similar unsolicited fax advertisements to at least 40 other persons in Michigan.

19. There is no reasonable means for Plaintiff or other recipients of Defendants'

unsolicited advertising faxes to avoid receiving illegal faxes. Fax machines must be left on and ready to receive the urgent communications authorized by their owners.

**COUNT I – TCPA**

20. Plaintiff incorporates ¶¶ 1-19.

21. The TCPA makes unlawful the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine ...” 47 U.S.C. §227(b)(1)(C).

22. The TCPA, 47 U.S.C. §227(b)(3), provides:

Private right of action.

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the Court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the subparagraph (B) of this paragraph.

23. Plaintiff and each class member suffered damages as a result of receipt of the

unsolicited faxes, in the form of paper and ink or toner consumed as a result.

Furthermore, Plaintiff's statutory right of privacy was invaded.

24. Plaintiff and each class member is entitled to statutory damages.

25. Defendants violated the TCPA even if their actions were only negligent.

26. Defendants should be enjoined from committing similar violations in the future.

### **CLASS ALLEGATIONS**

27. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), Plaintiff brings this claim on behalf of a class, consisting of (a) all persons (b) who, on or after a date four years prior to the filing of this action (28 U.S.C. §1658), (c) were sent faxes by or on behalf of Research Now Group, LLC and/or E-Rewards Services, Inc. offering payment in exchange for participation in a survey.

28. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

29. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether Defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. The manner in which Defendants compiled or obtained the list of fax

numbers;

c. Whether Defendants thereby violated the TCPA.

30. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

31. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

32. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against Defendants is small because it is not economically feasible to bring individual actions.

33. Several courts have certified class actions under the TCPA. *American Copper & Brass, Inc. v. Lake City Indus. Products, Inc.*, 757 F.3d 540, 544 (6<sup>th</sup> Cir. 2014); *In re Sandusky Wellness Center, LLC*, 570 Fed.Appx. 437, 437 (6<sup>th</sup> Cir. 2014); *Sandusky Wellness Center, LLC v. Medtox Scientific, Inc.*, 821 F.3d 992, 998 (8<sup>th</sup> Cir. 2016); *Holtzman v. Turza*, 08cv2014, 2009 WL 3334909 (N.D.Ill. Oct. 14, 2009), *aff'd in part, rev'd in part, vacated in part*. 728 F.3d 682 (7<sup>th</sup> Cir. 2013); *Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc.* 2015 IL 118644, 48 N.E.3d1060; *Sadowski v. Med1 Online, LLC*, 07cv2973, 2008 WL 2224892,

2008 U.S. Dist. LEXIS 41766 (N.D.Ill., May 27, 2008); *CE Design Ltd. v Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D.Ill. 2009); *Targin Sign Sys. v Preferred Chiropractic Ctr., Ltd.*, 679 F. Supp. 2d 894 (N.D.Ill. 2010); *Garrett v. Ragle Dental Lab, Inc.*, 10cv1315, 2010 U.S. Dist. LEXIS 108339, 2010 WL 4074379 (N.D.Ill., Oct. 12, 2010); *Hinman v. M & M Rental Ctr.*, 545 F.Supp. 2d 802 (N.D.Ill. 2008); *G.M. Sign, Inc. v. Group C Communs., Inc.*, 08cv4521, 2010 WL 744262, 2010 U.S. Dist. LEXIS 17843 (N.D. Ill. Feb. 25, 2010); *Kavu, Inc. v. Omnipak Corp.*, 246 F.R.D. 642 (W.D.Wash. 2007); *Display South, Inc. v. Express Computer Supply, Inc.*, 961 So.2d 451, 455 (La. App. 1st Cir. 2007); *Display South, Inc. v. Graphics House Sports Promotions, Inc.*, 992 So. 2d 510 (La. App. 1st Cir. 2008); *Lampkin v. GGH, Inc.*, 146 P.3d 847 (Ok. App. 2006); *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203 Ariz. (App.) 94, 50 P.3d 844 (2002); *Core Funding Group, LLC v. Young*, 792 N.E.2d 547 (Ind.App. 2003); *Critchfield Physical Therapy v. Taranto Group, Inc.*, 293 Kan. 285; 263 P.3d 767 (2011); *Karen S. Little, L.L.C. v. Drury Inns. Inc.*, 306 S.W.3d 577 (Mo. App. 2010).

34. Management of this class action is likely to present significantly fewer difficulties that those presented in many class actions, e.g. for securities fraud.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the class and against Defendants for:

- a. Statutory damages;
- b. An injunction against the further transmission of unsolicited fax advertising;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

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**NOTICE OF ASSIGNMENT**

Please be advised that all rights relating to attorney's fees have been assigned to counsel.

/s/ Daniel A. Edelman  
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**EXHIBIT A**



**e-Rewards**  
MEDICAL MARKET RESEARCH

**FAX**

**TO:** ATTN: PHYSICIAN

**FAX:** 17343388301

**RE:** \$10 Reward - 3 Minute Key Opinion Leader Poll!

**NUMBER OF PAGES:** 1

**FROM:** Linda Roberts, e-Rewards Medical

**OUR FAX:** (800) 381-2472

**DATE:** 11/22/2016

Dear valued healthcare professional,

e-Rewards® Medical Market Research, a leading provider of market research services to the professional healthcare community, would like to invite you to participate in the following market research study.

**Topic:** Key Opinion Leader Poll!

**Reward:**

**Length of Survey:**

**Complete By:**

To access the survey, please enter the entire Web address below into your Web browser address bar. When prompted, please enter your Invitation Code and PIN.

**Web Address:**

**Invitation Code:**                      |    **PIN:**

If you qualify for and complete the survey, you will receive a Reward Confirmation Email to redeem your promocode and access your reward. You may select either a virtual e-Rewards Medical Visa® Prepaid Card (ready for use immediately), a physical Prepaid Card or check (which will be mailed to you), or save your reward for later.

We encourage you to respond quickly as this survey will only be available until a predetermined number of responses have been received. Please save this invitation until you have received your reward.

Sincerely,

**Linda Roberts**  
Member Services Manager  
Lroberts@e-rewards.com  
(214) 365-7699  
www.e-rewardsmedical.com

If you are a California resident, please be advised that this invitation to participate in a market research survey (i) is not an "unsolicited advertisement" that is "advertising the commercial availability or quality of any property, goods, or services," and (ii) is not subject to Cal. Bus. & Prof. Code Section 17538.43.

If you would like to be excluded from future fax communications from Research Now Group, Inc., please write your fax number and "CANCEL" on this page and fax to (800) 381-2472. Please allow twenty-four (24) hours to process your request.

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